UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,166	07/08/2000	Holger Kunstle	U-Wp-5528 Wacker	8687

22045 7590 02/28/2003

BROOKS & KUSHMAN
1000 TOWN CENTER 22ND FL
SOUTHFIELD, MI 48075

EXAMINER
AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
1733	15

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/612,166	KUNSTLE ET AL.	
	Examiner	Art Unit	
	Jeff H. Aftergut	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 January 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. In light of the newly acquired prior art discussed below, the final rejection previously made is hereby withdrawn and the flowing rejections are being applied. Note that this action is a non-final action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, the applicant recites the use of VeoVa10® or VeoVa11® in the composition, however applicant is advised that such are trademarks. As such, the compositions of the same may vary over time. It is suggested that applicant provide a generic description of the compositions rather than the trademarks of the same. Additionally, it is suggested that applicant submit a specification sheet of the compositions so that it is clear that the compositions referred to in the claims are in fact supported by the generic description presented by applicant. Claims 8-10 depend in one way or another from claim 7.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-8, 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 47-3705 (newly cited) in view of EP 295727.

Japanese Patent '705 taught that it was known at the time the invention was made to form an adhesive and/or coating composition which included a blend of monomers including 10-85% by weight of vinyl acetate, 10-60% by weight of ethylene and 5-30% by weight of vinyl ester of tertiary aliphatic carboxylic acid having 10 carbon atoms in the acid moiety (VeoVa10®). The reference failed to make mention of the inclusion of an acrylic or methacrylic acid within the mixture of monomers.

In the manufacture of an adhesive composition which included vinyl acetate, ethylene and VeoVa9® (vinyl ester of tertiary aliphatic carboxylic acid having 9 carbon atoms in the acid moiety), it was known at the time the invention was made to incorporate a stabilizer within the mixture which included acrylic acid as evidenced by EP '727(applicant is referred to page 4, lines 9-15, for example). Applicant is also referred page 3, lines 51-53 where the reference to EP '727 expressed that one skilled in the art would have understood that the powder products of the blended compositions would have been useful as adhesives as well as latex coatings. Note that while a complete translation of Japanese Patent '705 is not yet available, the reference appeared to suggest to those skilled in the art to utilize VeoVa10 ® with vinyl acetate as the polymer blend of vinyl components in the mixture as expressed by EP '727 (page 2, lines 25-35). The applicant is advised that while the reference to Japanese Patent '705 did not express that one skilled in the art at the time the invention was made would have selected polymers having the specified glass transition temperatures for the vinyl blend, that the reference suggested the same monomers as recited as useful for the monomers of the vinyl blend (i.e. VeoVa(10)® as well as vinyl acetate

which would naturally have the requisite properties of glass transition temperature as such is intrinsic in the materials). Additionally, the references do not express that the combination is of low volatile emission, however the blend of monomers recited in the combination (wherein one incorporated a stabilizer of acrylic acid in the blend) would have resulted in the same composition as that recited by applicant and therefore it must have the same property. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the a stabilizer within the lattice formed from the mixture of monomers of Japanese Patent '705 as such was suggested as useful in similar compositions as suggested by EP '727.

It should be noted that the proposed combination would have resulted in a composition which was devoid of (meth)acrylate alkyl esters (and thus would have provided for a composition which was of low emissions).

With respect to claim 2, note that both Japanese Patent '705 and EP '727 suggested that one skilled in the art would have utilized a vinyl acetate as one of the vinyl monomers which were blended. Regarding claim 3, note that the reference to Japanese Patent '705 suggested that one skilled in the art would have VeoVa(10)® as the material for the vinyl monomer to be mixed. Regarding claim 4, note that EP '727 suggested that as the stabilizer one skilled in the art would have used acrylic acid. Regarding claims 5 and 6, the references did not include the specified monomers, however the claims do not require the inclusion of the same. regarding claim 7, see the references as discussed above, noting that the specified amounts of the monomers in the mixture were suggested by the prior art. Regarding claim 8, one skilled in the art would have understood that the materials of the claim would have been useful as an adhesive composition for bonding two materials together. Regarding claim 11, one skilled in the art would

have been expected to understand that methacrylic acid would have been an alternative to acrylic acids of EP '727. regarding claims 12 and 13, the references suggested the specified compositions as well as the relative percentages used in the composition. Regarding the lack of (meth)acrylate alkyl esters, the references failed to teach the use of the same. additionally, note that the adhesives would have had a low volatile emission as the combination suggested the same mixture of monomers (and as such it would necessarily have had the specified property). Regarding claim 14, note that the reference suggested that one skilled in the art would have utilized vinyl acetate. Regarding claims 15 and 16, the references suggested the use of VeoVa10® which is a vinyl ester of alpha-branched monocarboxylic acid having 10 carbon atoms.

6. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 5 further taken with Japanese Patent 4-145182 (newly cited).

While the references as set forth above suggested that those skilled in the art would have blended the specified monomers, the polymers to produced were used as latex materials as well as adhesives. The references did not expressly suggest that such materials would have been utilized as floor adhesive materials. However, it was known to provide a mixture of vinyl acetate/ VeoVa® /acrylic monomer and vinyl acetate/ethylene as suggested by Japanese Patent '182. the reference suggested that the specified polymer mixture would have been useful as a floor adhesive material. clearly, one skilled in the art at the time the invention was made would have understood that the adhesive material would have also been useful for attaching ceiling materials as well. It would have been obvious to one of ordinary skill in the art at the time the

invention was made to utilize the blended polymers of paragraph 5 above as an adhesive material for securing floor or ceiling materials as suggested by Japanese Patent '182

Response to Arguments

7. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

The applicant is advised that the reference to Weissgerber et al has been removed from the prior art rejection in light of the arguments presented relating to the inclusion of the two specific vinyl monomer as well as the exclusion of acrylic acid esters in the claims. It is agreed that the reference does not anticipate the claims as presented. The newly presented prior art asset forth above is believed to render the claimed invention obvious, however.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
February 24, 2003